BRITISH COLUMBIA

Fair and Effective:
A Review of Employment Standards in British Columbia

Discussion Paper

November 2001

Ministry of Skills Development and Labour

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Fair and Effective: A Review of Employment Standards in British Columbia

Introduction

The *Employment Standards Act* sets basic workplace standards that cover more than two million B.C. workers.

The Act sets rules for statutory holidays, overtime pay rates; meal breaks; time free from work, minimum daily pay, and how some of these requirements can be varied to suit different circumstances.

It also provides that negotiated union contracts must 'meet or exceed' employment standards.

The government's New Era Document contains a commitment to give workers and employers greater flexibility in employment standards to negotiate mutually beneficial relationships that help them compete and prosper.

The Minister of Skills Development and Labour is reviewing employment standards to protect vulnerable workers, accommodate a modern economy and promote opportunities to enhance British Columbia's competitiveness. The ministry will also be consulting with various sectors to address any additional concerns that may not be addressed sufficiently by this broader review, including high technology, agriculture, silviculture and logging, oil and gas, trucking, taxis, and personal care attendants.

The review will focus on these questions:

- Who should be covered by the Act?
- What level of protection is needed?
- How can flexibility and economic competitiveness be achieved without compromising employee protection?

Guiding Principles of the Review:

- Employment standards are needed to protect vulnerable workers.
- Employment standards in B.C need to promote personal choice, employment growth and prosperity.
- Standards need to be fair, enforceable and effective.
- Government is committed to less intervention in the economy and increased self-reliance.

Fair and Effective: ***A Review of Employment Standards in British Columbia***

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Please consider the following questions, the background material and options provided, and offer your comments to government.

Comments and suggestions may be made by December 12, 2001 through written submissions to the Ministry of Skills Development and Labour at Website www.labour.gov.bc.ca/esareview, or by mail:

Policy and Legislation Branch
PO Box 9591 Stn Prov Govt
Victoria BC V8W 9K4

The following paper presents the status quo, and highlights various options for discussion that may or may not be mutually exclusive. It is intended to stimulate discussion, not to limit the possible range of options including the status quo.

For a complete version of both the *Employment Standards Act* and regulations please access the Queen's Printer Website at http://www.qp.gov.bc.ca/statreg/stat/E/96113_01.htm. Explanatory information on the standards can be accessed at the Ministry Website http://www.labour.gov.bc.ca/esb/igm. A summary of relevant standards in other jurisdictions can be found in appendix 3.

PART A: Who should be covered by the act? What level of protection is needed?

Given the need for flexibility to enhance competitiveness, and the scarcity of government resources, regulated standards must be focused on workers who have a lack of options in the labour market and need protection. How can this best be achieved?

	Current statutory requirements	Options
A1. Do workers with higher incomes need the protection of minimum standards?	All workers in an employer-employee relationship are covered by the Act unless specifically excluded by the regulation. There are no exclusions related to income.	Exclude employees from coverage by the Act if they earn over a certain income threshold: Based on an annual[1] multiplier of: a. 4 times the minimum wage ($8.00 hour), which would equal $58,464.00 per year b. 2 times the average industrial wage ($17.59 hour)[2], which would equal $64,274.00 per year c. A set threshold of ~$60,000/year.
	Note: Cross-jurisdictional research indicates that none of the jurisdictions surveyed have a salary threshold for application of their employment standards.	

Notes:

[1] Based on 1,827 hours per year.
[2] Average hourly industrial wage (2000) for B.C. (determined annually by BC Stats)

A2. Should workers with a collective agreement under the* Labour Relations Code *be covered by the Act?

Current statutory requirements	Options
The relevant provisions in collective agreements must meet or exceed those in the relevant part of the Act, when considered in total, for • Annual vacation • Statutory holiday pay • Hours of work • Termination. If the Act does not have a 'meet or exceed' provision in a Part, each provision must be met as the minimum standard in a collective agreement.	1. Exclude from the Act employees who are covered by a collective agreement; this would remove the application of legislated minimum standards to employees who choose to be represented through collective agreement. 2. Exclude from the Act those employees who are covered by a collective agreement, with some exceptions, e.g., pregnancy, parental leave, payment of wages, or other. 3. If a collective agreement is silent on provision of the ESA, deem the ESA to apply in that case to the workers under that collective agreement.
California allows exceptions to employment standards regarding hours of work, overtime and wage provisions if provided for in a collective agreement. In Wasnington, collective agreements are not to interfere with employment standards. In Ontario, collective agreements must at least be in compliance with the ESA.	

Notes:

A3. Should professionals be covered by the Act?

Current statutory requirements	Options
Certain professions are excluded from the Act.	Exclude from the Act all those professions who are self-governing by statute, or licensed by statute. A list of self-governing and/or licensed professions is appended.
Cross-jurisdictional analysis indicates that specified self-governing professions may be exempted from certain employment standards provisions, as determined by each jurisdiction.	

A4. Should managers be covered by the Act?

Current statutory requirements	Options
Managers are currently excluded from Part 4 (Hours of work and overtime) and Part 5 (Statutory Holiday Pay) of the Act, all other provisions of the Act apply. 'Manager' is defined as 'a person whose primary employment duties consist of supervising and directing other employees, or a person employed in an executive capacity'.	1. Expand the definition of manager to include employees who do not necessarily have supervisory or executive capacity, but do have management level responsibilities. and/or 2. Exclude managers from the Act.
All surveyed jurisdictions exclude managers from specified provisions such as hours of work, eating periods and overtime.	

Notes:

A5. Should workers who receive earnings through a compensation system other than wages or salary, such as commission, use of vehicles (e.g. taxi leasing) or other equipment be covered by the Act?

Current statutory requirements	Options
"Wages" are defined in the Act to include salaries, commissions, and incentive money which relates to productivity or efficiency.	1.Restrict exclusion by industry and occupation. 2. Set an income threshold above which those in commission sales would be excluded from the Act. 3. Exclude these workers from everything except payment of minimum wage, notice on termination, and leaves.
In Ontario, Alberta, California and Washington these workers can be exempted from hours of work, overtime, eating periods, statutory holiday provisions, and minimum wage and/or record-keeping provisions. Exemptions depend on how the work is classified, the proportion of total wages that come from commission, and their overall earnings.	

Notes:

A6. Should employment standards statutes provide that employers are in compliance if their workers agree to terms and conditions of employment different from that provided for in the Act? If so, how would workers be protected from unfair practices?

Current statutory requirements	Options
The Act defines 'employee', 'employer' and 'work'. This establishes the parameters of an employer-employer relationship, in which case the Act applies. Agreements outside of the requirements of the Act are void. The Act applies to all workers in an employee-employer relationship, unless specifically excluded by regulation. To further interpret the employer-employee relationship, the Director uses the common law tests developed by the courts. In general, the degree to which the party who pays for the service provided controls the supply of material and tools, and retains direction and control of the activities, increases the likelihood that the Director will find the relationship to be one of employer-employee.	1. Exclude workers who request their employer, or agree to their employer's request, for work arrangements that operate outside the requirements of the Act. How would workers be protected from unfair employers? 2. Exclude dependent contractors from everything except payment of minimum wage, notice on termination, and leaves. 3. Those over a certain income threshold may opt out of the Act, except for payment of wages, notice on termination, and leaves.
Flexibility around hours of work and overtime is permitted in all of the jurisdictions surveyed. Each jurisdiction has different requirements for allowing such flexibility. Some flexible arrangements may be made through agreements between the employers and employees. Others must be approved by an employment standards authority. Often an authority must grant approvals where the arrangement varies the usual standards significantly.	

Notes:

A7. Other concerns and/or ideas?

PART B: How can we develop further flexibility in the workplace?

	Current Statutory Requirements	Options
B1. Flexible Work Schedules and Overtime	Total number of hours free from work per week (32) and between each shift worked (8)are specified. Total hours of work per day (8) and per week (40) are specified. An employee is entitled to be paid for a minimum of 4 hours at the regular wage, if the employee starts work, unless the work is suspended for a reason completely beyond the employer's control, including unsuitable weather conditions, or 2 hours at the regular wage, in any other case unless the employee is unfit to work or fails to comply with the Health and Safety Regulation of the WCB. No employee is to work more than 5 hours without a break, and each break must be at least ½ hour.	1. Work Schedule Agreement - agreed to be employee and employer (see sample schedules appended) • Retain 8 hours free from work between shifts. • Retain 32 hours free from work per week, or as an option • Average the 32 hours free from work over a multi-week schedule, to be taken consecutively. • By agreement, allow parties to negotiate hours of work between 2 or 3 and 12 hours a day, at regular wage, for 1 to 4 weeks at a time. • Overtime (1 ½ times regular wage) payable for hours outside schedule and after 40 hours a week or average of 40 hours over a multiple workweek schedule. • Schedule can be cancelled by either party. • Schedule can be modified by agreement/by notice to the employee.

	Current Statutory Requirements	Options
Flexible Work Schedules and Overtime *- Continued*		2. Alternative hours of work - can be imposed by employer without employee agreement (see sample schedules appended) • Retain 8 hours free from work between shifts. • Retain 32 hours free from work per week, or as an option • Average the 32 hours free from work over a multi-week schedule, to be taken consecutively. • Employers who provide more than 30 hours work a week can impose hours, without overtime premiums, of up to 12 hours in a day and 40 hours in a week, or average of 40 hours work in a multiple workweek schedule. • Employers who provide more than 20 hours work a week can impose hours of work in either 2 or 3 days, of up to 10 hours a day. The schedule must be provided to the employee ahead of time in writing.
		3. Restrict the number of hours an employee may work, as in other jurisdictions (Ontario, Alberta).

	Current Statutory Requirements	Options
Flexible Work Schedules and Overtime *- Continued*		4. Ontario (see attachment 'Employment Standards in Other Jurisdictions') • Minimum of 3 hours paid per day, unless employee is a student (including those over 18 years) or regular shift is for 3 hours work or less. • Daily rest period of 11 consecutive hours in a 24-hour period. • 8 hours free from work between shifts unless total time worked in both shifts is not more than 13 hours. • 24 consecutive hours off in each week or 48 every 2 weeks. • Maximum of 8 hours per day and 48 per week, unless employee agreement is in place to permit work up to 60 hour per week. After 60 hours a week, approval of Director is required. • Overtime premium payable at 1½ times regular wage after 44 in a week. • By agreement, hours in a day can be longer with overtime payable after 44 hours in a week. Employee agreements may average weekly hours over a period up to 4 weeks. Director must approve averaging over a longer period. Employee retains the right to refuse.

	Current Statutory Requirements	Options
Flexible Work Schedules and Overtime *- Continued*		5. Alberta (see attachment 'Employment Standards in Other Jurisdictions') • All hours of work confined to a 12-hour period, except in the case of emergency or permit issued by the Director. • Overtime wages at 1½ times regular wage to be paid after 8 hours in a day and 44 hours in a week. • Limited opportunity to allow for compressed workweeks, with a maximum of 12 hours per day. Allows agreement to take time off in the future at the rate overtime wages were earned.
		6. Australia (see attachment 'Employment Standards in Other Jurisdictions') • Sets a few standards, e.g. leaves, minimum wage and notice on termination. • Employees and employers are allowed to negotiate individualized agreements on pay and working conditions, including hours of work. However, each agreement must be approved by an officer of the regulating bureaucracy, the 'Employment Advocate". The average hours of work in Australia is 36 to 40 per week.

Current Statutory Requirements	Options
	7. Minimum call-out, or daily call-out, instead of minimum daily pay of 2 or 3 hours. 8. Right of employee to refuse overtime in specified circumstances. What would those circumstances be? 9. Increase the length and/or frequency of breaks if the shift is over a certain number of hours.

Minimum Hours

Ontario – 3, unless employee is a student (including those over 18 years) or employee's shift is 3 hours or less, Alberta – 3; California – 2; Washington – no minimum.

Maximum Hours

Ontario – no more that 8 per day or 48 per week unless agreement is made or Director approves alternative schedule.

Alberta – no more than 12 hours/day, unless otherwise agreed or Director approves alternative schedule.

California – 8 hours/day, 40 hours/week, unless alternative schedule is established.

Washington – no maximum

Required Rest Periods

Ontario – 11 hours/day, 24 hours/week or 48 hours/2 weeks; 8 hours between shifts.

Alberta – 1 day/week, 2 days/2 weeks, 3 days/3 weeks, 4 days/4weeks.

California – 1 day/week. Rest days may be accumulated for use later.

Washington – no provisions other than meal breaks during shifts.

Maximum Hours Before Overtime Payment Required

Ontario – After 44 hours/week.

Alberta – After 8 hours/day or 44 hours/week, whichever is greater.

California – After 8 hours/day or 40 hours/week.

Washington – After 40 hours/week.

Notes:

B2. Should the scope or method of providing variances to standards be changed?

Current statutory requirements	Options
Variances may be granted by the Director on a time-limited, site-specific basis on the written request of the employer and employees, if the majority of affected employees agree. A variance is not a waiver of the standards. The following provisions may be varied: • Time period specified in the definition of "temporary layoff". • Paydays. • Special Clothing. • Notice of a change in shift. • Minimum daily hours. • Maximum hours of work. • Hours free from work. • Overtime wages for employees not on a flexible work schedule. • Notice and termination pay requirements for group terminations.	1. Build in enough flexibility that the need for variances is dramatically reduced. 2. Expand the possible scope of variances (e.g. sections of the Act; industry-wide rather than workplace based). 3. Allow the Director to substantially alter the standards to foster unique working relationships. 4. Legislate direction that requires the Director to alter standards (rather than just vary them), and specify the conditions under which this may happen.
Variances are permitted in all surveyed jurisdictions. In Washington, variances may be granted if it is determined that the applicant has shown good cause for lack of compliance. Variances are permitted in Alberta, though they are not often used. In Ontario, the Director may grant variances for hours of work provisions, including overtime arrangements.	

Notes:

B3 Should the requirements of the hours of work notice be changed?

Current legislation does not address many common work arrangements, e.g., on call employees, or hospitality industry employees, when it is difficult to schedule work or breaks.

On the other hand, workers need notice of hours of work to manage their private lives and meet obligations.

Current statutory requirements	Options
Hours of work notices must be posted in each workplace and include details of the shift start and end times, scheduled meal breaks, and give 24 hours notice of change (unless the shift is extended before its completion). The schedule may not be changed unless the change results in overtime wages.	1. Hours of work notices should be posted, at least 24 hours in advance of work, wherever possible. If the Director deems it possible to post notice, the Director may require the notice to include • the time work starts and ends • eating periods Schedules may be changed with 24 hours notice in writing; if less than 24 hours notice, overtime is due. 2. No requirement to post notice of schedule but Option 1 is encouraged as 'best practice'. 3. Allow shorter notice periods provided the worker receives on-call pay.
Hours of work notices are required in Alberta and in Ontario for designated occupations. In Alberta, the notices must be posted where all employees can see it, or by some other reasonable method. Employees must be notified in writing of shift changes at least 24 hours in advance of the change. In Ontario, the notices must be posted at least 7 days before it comes into effect, where it is conspicuous to all employees and remain there throughout the schedule.	

Notes:

PART C: How can economic competitiveness be achieved without compromising employee protection in the workplace?

C1. Is it necessary for wage statements to be in written format?

Current statutory requirements	Options
The employer must give each employee on every payday a written wage statement for the pay period that includes specified information. The employer may provide the statement to the employee electronically if requested in writing by an employee or by a trade union representing an employee.	1. Allow the employer sole discretion as to whether statements are electronic or written, as long as the employee has ready, confidential electronic access and the ability to print a copy. If this level of electronic access is not readily available to the employee, the employer must provide the written statement.

C2. Should the rate of overtime premiums be changed?

Current statutory requirements	Options
Overtime is not prohibited (unless 'excessive') but premium rates must be paid at 1½ times the regular rate or 2 times the regular rate, under specified circumstances	Eliminate the rate of double times the regular wage, and replace it with 1½ times.
Overtime premiums in Ontario are 1.5x regular wage for each hour of overtime worked or 1.5 hours of paid time off work for each hour of overtime worked instead of overtime pay if employer and employee agree and time off is taken within three months. Overtime premiums in Alberta and Washington are 1.5x regular wage. In California, premiums are 1.5x regular wage after 8 hours, 2x after 12 hours. Any work performed in excess of 8 hours on the 7th day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.	

Notes:

C3. Should statutory holiday pay overtime premiums be reduced as long as hours worked on a statutory holiday are recognized financially?

Current statutory requirements	Options
Entitlement is after 30 calendar days of employment. If the statutory holiday is on a regular working day and the employee is given that day off, regular wage is payable for the day. If required to work on the statutory holiday, the rate of pay due the employee is 1 ½ times the regular wage for hours up to 11 and 2 times for hours after 11 in the day, plus a day off at regular pay within a certain time period.	1.Remove the pre-qualification period for administrative simplicity. 2. Increase the pre-qualification period to limit the statutory pay entitlement to longer-term employees. 3. Make the calculation for the 'day off' the same for everyone, regardless of method of remuneration, by converting to percentage calculation. 4. Provide for double time to be paid to those employees who work on a statutory holiday unless they are paid on a commission or incentive basis. No other day off at straight time in addition.
Statutory holiday premiums in Ontario are 1.5x regular wage, in Alberta 1.5x regular wage or regular wage plus one day holiday that would normally be a workday with pay. There are no state provisions for statutory holiday pay in Washington or California.	

Notes:

C4. Are the time limits for filing complaints with the Branch fair to both employers and employees?

Current statutory requirements	Options
An employee who has terminated employment must file a written complaint with the Employment Standards Branch within 6 months after the last day of employment. There are no time limits for employees who continue to be employed by that employer.	1. Require these complaints to be filed with the Branch within 3 months. 2. Require that employees who are still employed by the employer file their complaints within 3 months of the alleged offence.

C5. Is the length of time an employer is exposed to liability for back wages reasonable?

Current statutory requirements	Options
An employer is liable for wages owing on determination by the Director for a period of 24 months before the complaint or termination of employment.	1. Reduce the period of liability to 12 months. 2. Reduce the period of liability to 6 months; increase penalties to employers so that there is a reasonable deterrent factor.
Subject to exceptions, in Ontario wages may only be recovered within six months of coming due and in Alberta within one-year from either, date of termination or date on which wages should have been paid. In California, time limit for filing compliant vary according to type of employment contract – i.e. oral contract – 2 years, written contract – 4 years, statutory complaint – 3 yrs. Washington does not have legislated time limits.	

Notes:

C6. Is the payroll record keeping required of employers reasonable?

Current statutory requirements	Options
The employer must retain payroll records for 5 years after the employment terminates. The types of payroll records are specified by legislation to allow investigation of complaint.	Reduce the period for retention of records to 3 years. (This is dependent on decisions made in C.4 and C.5)

Notes:

C7. Are the termination provisions fair to both employers and employees?

Current statutory requirements	Options
The employer is liable for wages or written notice if an employee is terminated, unless termination is for 'just cause'. The length of notice or amount of wages owing is dependent on the employee's length of service: • 1 week after 3 consecutive months of employment • 2 weeks after 12 months • 3 weeks after 3 years plus one additional week for each additional year of employment, to a maximum of 8 weeks. If the employment of 50 or more employees at a single location is to be terminated within any 2 month period, the employer must give written notice, or the equivalent in wages, as follows: • 8 weeks before the effective date of termination if 50 to 100 employees will be affected. • 12 weeks if 101 to 300 employees. • 16 weeks if 301 or more employees. The terms "temporary layoff" and "termination of employment" are defined in the legislation to clarify which employees are included in the above provisions.	1. Build more flexibility into termination provisions to allow business to respond to cyclical changes in the economy and/or contractual requirements. How could this be done? 2. Compensation for length of service should be referred to as 'severance pay' for clarity. 3. Make severance pay payable after 6 months rather than 3 months. 4. Eliminate provisions specific to group terminations. 5. Eliminate the need to determine if termination is for 'just cause'. One option is to lengthen the length of service to 6 or 12 months for entitlement to severance pay, reduce the termination pay entitlements to 2 weeks after one year of consecutive employment and 3 weeks after five years, payable for whatever cause for termination. 6. Restrict, and define, 'just cause' to 'gross misconduct', which includes fraud, theft, or violence. The employer must have filed a complaint with the police for case to be considered under 'just cause'.

Notes:

C8. What are other options for enforcement of employment standards?

Current statutory requirements	Options
Currently the Branch issues determinations for the amount of wages owing based on an employees' 'regular wage'. Unless a category of worker is excluded from all or parts of the Act, the Branch must enforce employer compliance.	1.If a settlement is reached by the parties on wages owing, authorize the Director to set terms regarding the timing of payment. 2. The Branch should work with industry councils and associations, and unions to encourage and develop their self-regulation of employment standards. 3. Establish a penalty system that results on first offence in a warning. On second offence the employer is required to work with his industry council or association to prevent recurrence of the offence, and on third offence is required to pay major penalties. 4. How could the determination and appeal processes be refined? 5. Are there ways of implementing more efficient and effective processes for achieving compliance with the Act? 6. Offer binding decision in a specified short timeframe if employee consents to mediation-arbitration in front of a single adjudicator with no appeal. 7. Should more deterrence features be added to the system – increased penalties, automatic interest payments on outstanding penalties?

Notes

C9. Other ideas and/or concerns?

- APPENDICES -

APPENDIX 1: Hours of Work, Overtime and Scheduling Notification – Models 1 and 2

Work Schedule Models

General:
The following two *Work Schedule* Models are designed to meet the need of employees and employers to enter into mutually acceptable work schedules that will help British Columbians compete and prosper as outlined in the New Era Document.

Both Models retain the 32 hours free from work in a week (or as an option, average the 32 hours free from work over a multi-week schedule, to be taken consecutively), and 8 hours free between shifts, and recognize flexible *Work Schedules* should strike a balance between work and family responsibilities. These Models meet the need for greater flexibility, and reduce regulation.

- Model #1, enables employers and employees to schedule mutually agreeable work days of between the daily minimum and 12 hours a day, within an accommodating and reduced statutory framework. Flexibility is provided to both employers and employees to agree to work schedules within a regulatory envelope. Even further flexibility exists for employers to schedule work outside the schedule if it results in overtime for the employee which would be payable at one and one-half times the regular wage rate for that work.

- Model #2 permits employers who provide at least 20 hours of work to an employee in a week to establish the employee's hours of work, for periods of one or more weeks, within a statutory reduced framework. In this model, affected employees are entitled to a set schedule of work which can neither be increased nor decreased, thus providing employees with the certainty necessary to structure activities outside of their work obligations. This model does not require employee approval. It must be for a minimum of a week and the schedule communicated to the employee cannot be changed within that period once set by the employer.

Both Models continue to be subject to other provisions of the Act; which may include minimum time off between shifts, time free from work each week, limitations in regard to hours that are detrimental to an employees health or safety, and minimum daily wage requirements.

Employers and employees who do not, or cannot, subscribe to a *Work Schedule* will be governed by general overtime and hours of work provisions of the Act (currently after 8 in a day, or 40 in a week). Typically, this will encompass those situations where it is not possible to schedule work (e.g., on-call relief work), or where work is performed on a temporary, part-time (less than 20 hours in a week), or sporadic basis.

Comparative Summary of Model *Work Schedule*:

	Model #1	Model #2
Length of Schedule:	Schedule can be for one or more weeks	Schedule can be for one or more weeks
Weekly hours averaged:	Hours can be averaged over a period up to 4 weeks	Hours can be averaged over a period up to 4 weeks
Daily hours:	Applies to scheduled work of between regulated daily minimum hours and 12 hours a day, regardless of hours worked in a week Can consist of any hours between regulated daily minimum hours and 12 a day, up to six days a week	Applies to scheduled work in which employers are free to compress 20-30 hour work a week into 2 or 3 days a week; between regulated daily minimum hours and 10 in a day; or if more than 30 hours of work in a week into daily hours of between daily minimum requirements and 12 a day
Overtime:	After daily scheduled hours, over 12 in a day, and after 40 hours a week (or average of 40 hours in a multiple week schedule)	No overtime (no ability to change)
Agreement/imposition:	Requires agreement	Can be imposed by employer;
Degree of flexibility:	High degree of flexibility to schedule, by agreement	Flexibility exists for employer to set, but not alter schedule No flexibility for employee to set hours of work
Schedule notice requirements:	Must be scheduled in writing at least 24 hours in advance	Must be scheduled in writing at least 24 hours in advance
Changes to schedule:	Schedule can be changed by written agreement at least 24 hours in advance of change (even mid-schedule)	Schedule cannot be changed once communicated. Once an employer sets a week or multi-week schedule it cannot be changed until the expiry of that period.
Work outside of schedule:	Employees may work outside of schedule, by agreement, with at least 24 hours written notice of change Employers may also require employees to work outside of the schedule, without notice, providing the employee is paid 11/2 times regular rate	Employee may not work outside of schedule

APPENDIX 2: Sample Work Schedules

Examples of common work scenarios addressed by Model 1 or 2; for which employers and employees currently obtain variances.

Employees in logging camps:

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours		10	10	10	10	10	10

2nd week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	10	10					

N.B. Allows compression of 80 hours of work into 8 days. Another common schedule in the industry is 8 hours work a day on 10 consecutive days, followed by 4 consecutive days free from work. These scenarios appear where transportation costs to and from the worksite are a significant factor.

Employees at fish farm sites:

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours		6	11	11	11	11	11

2nd week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	11	8					

N.B. At fish farm sites, often travel days will be shorter. Again, this schedule, like the above logging example compresses two weeks work, thus maximizing consecutive days off from work.

Sometimes, in both logging and fish farms industries, schedules can be for three-week periods with the same ratio of days at work and consecutive days free from work.

Employees at Medical/Dental offices:

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours		9	9	9	9	4	

N.B. Model 1 or 2 will also accommodate what is commonly referred to as flex days, i.e., extra work each day in return for every 2nd Friday off.

Employees at resort locations:

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	8	8	8	8	8	8	8

2nd week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	8	8	8	8	8	8	8

3rd week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	8	8	8	8	8	8	Off

4th week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	Off	Off	Off	Off	Off	Off	Off

Employees at restaurants

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours				8	8	10	10

Production employees:

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	12	12	12	Off	Off	Off	Off

2nd week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	12	12	12	8	Off	Off	Off

Relief dispatchers (taxi/transportation)

1st week

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
No. of Hours	Off	Off	Off	Off	Off	12	12

N.B. Regular dispatch employees can also benefit from compressing work schedules.

APPENDIX 3: Employment Standards in Other Jurisdictions

COVERAGE

	Ontario	Alberta	California	Washington	BC	Other
Coverage	Subject to designated exceptions, the Act applies to an employee and his/her employer if, a) the employee's work is to be performed in Ontario; or b) the employee's work is to be performed in Ontario and outside Ontario but the work performed outside of Ontario is a continuation of work performed in Ontario.	Act applies to all employers and employees, including the Crown in right of Alberta and its employees, except as otherwise provided in this section.	Labor Code applies to all workers in California, with the exception of some employees working under shared jurisdictions, such as federal employees.	Standards apply to all persons working in any industry or occupation in Washington, unless otherwise exempted. General exemptions include, but are not limited to, newspaper vendors or carriers, domestic or casual labour in or about private residences, some agricultural labour, and any employee of the state, political subdivision or municipal corporation to the extent that these rules conflict with its statutes, rules or regulations.	Act applies to all employees, other than those excluded by regulation, regardless of the number of hours worked.	
Managers	Exempted from hours of work, rest periods and overtime provisions.	Exempted from hours of work, rest periods, overtime and record-keeping provisions	Exceptions may be made from hours of work and overtime provisions.	Exempted if specific requirements of employment are met.	Excluded from Part 4 – hours of work, overtime and statutory holiday provisions	

	Ontario	Alberta	California	Washington	BC	Other
Self-governing professions	Many professions are exempted from hours of work and eating periods, rest periods, overtime, minimum wage, public holidays and vacations with pay provisions.	Many professions are excluded from record-keeping, hours of work, overtime and overtime pay.	Exceptions may be made from hours of work and overtime provisions.	Exempted if specific requirements of employment are met.	Many professions are excluded from record-keeping, hours of work, overtime and overtime pay.	
Income level threshold						
Collective Agreements	Agreements must at least be in compliance with ESA.		Exceptions may be made from hours of work, overtime and wage provisions if provided for in an agreement.	Collective agreements are not to interfere with employment standards.	Agreements must meet or exceed annual vacation, statutory holiday pay, hours of work and termination provisions.	
Commissioned salespeople	Most are exempted from hours of work and eating periods, overtime, rest periods, minimum wage, public holidays and vacations with pay provisions.	Most are exempted from hours of work, overtime, statutory holiday, vacation, vacation pay and record-keeping provisions	May be excluded from minimum wage and overtime provisions, depending on nature of work and earnings.	May be excluded from employment standards, including minimum wages, depending on nature of the work		
Dependent Contractors	Covered as regular employees	Covered as regular employees	Covered as regular employees	Covered as regular employees	Covered if determined to be in an employee-employer relationship	

HOURS OF WORK

	Ontario	Alberta	California	Washington	BC	Other
Minimum hours	3 hours, unless employee is a student (including those over 18) or employee's regular shift is 3 hours or less	3 hours	2 hours	No minimum specified	2 hours if called in, 4 hours if work commenced	Yukon – 2 hours NWT, Nunavut – 4 hours
Maximum hours	No more than 8 hours/day, unless a longer workday has been established, or 48 hours/week. Exceptions are allowed to a maximum of 60 hours/week if employer and employee agree in writing. Director may approve exceptions for over 60 hours.	No more than 12 hours/day	8 hours/day, 40 hours/week. Alternative workweeks may be established.	No maximum specified	No maximum specified	Quebec – no designated maximum, standard workweeks defined for certain occupations NWT, Nunavut – 10 hours/day or 60 hours/week
Required Rest periods	11 hours/day, 24 hours/week or 48 hours/2 weeks. Employee must have 8 hours rest between shifts unless total time worked in both shifts isn't more than 13 hours.	1 day/week, 2 days/2 week period, 3 days/3 week period, 4 days/4 week period.	1 day/week. Rest days may be accumulated if employee is required to work more than 7 consecutive days.	No provisions for rest periods other than meal breaks required during shifts.	32 consecutive hours/week. Workers must have at least 8 hours rest between shifts unless in emergencies.	NB, NS, PEI, ND, YK, NWT and NU require rest periods to be on Sunday whenever possible.

	Ontario	Alberta	California	Washington	BC	Other
Hours of work notices	For designated industries, employers must post work schedule at least 7 days before it comes into effect and keep it posted throughout schedule. The schedule must be posted in a conspicuous place where it is likely to come to the attention of the employees to whom it relates.	Notices must be posted where they can be seen by employees, or by any other reasonable method. An employer must not require an employee to change from one shift to another without at least 24 hours written notice and 8 hours of rest between shifts.	No provisions	No provisions	Must be displayed in workplace where all employees can read the notices. An employer must give an employee 24 hours notice of a change in shift unless the employee will be entitled to overtime wages as a result of the change or the shift is extended before it ends.	

OVERTIME

	Ontario	Alberta	California	Washington	BC	Other
Maximum hours before overtime payment required	After 44 hours/week, unless another threshold is prescribed.	After 8 hours/day or 44 hours/week, whichever is greater.	After 8 hours/day	After 40 hours/week	After 8 hours/day or 40 hours/week	
Overtime premiums	1.5x Employee may be compensated for overtime hours by receiving 1.5 hours of paid time off work for each hour of overtime worked instead of overtime pay if employer and employee agree in writing and time off is taken within 3 months.	1.5x	1.5x after 8 hours, 2x after 12 hours. Any work in excess of 8 hours on the 7th day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.	1.5x	1.5x after 8 hours and 2x after 11 hours 1.5x after 40 hours and 2x after 48 hours	
Statutory Holiday premium	1.5x	1.5x regular wage rate or regular wage plus one day's holiday that would normally be a work day with pay. If holiday falls on a day that is normally a day of rest, no general holiday pay is entitled.	No provisions	No provisions	1.5x up to 11 hours, 2x after 11 hours, plus a day off at regular pay within a certain time period	ND – 2x regular wages if employee works a normal working day, if employee works less than a normal working day he/she receives regular wages for hours worked plus a full days pay. AB, MA and PEI – 2.5x

FLEXIBILITY

	Ontario	Alberta	California	Washington	BC	Other
Hours of work arrangements	Employment standards officials may grant employers variances from hours of work requirements. Exceptions to hours of work requirements are allowed in emergencies. General regulations exempt a list of occupations and professions from hours of work requirements.	Employment standards officials may grant employers variances from hours of work requirements. Exceptions to hours of work requirements are allowed in emergencies. Compressed workweeks are permitted – a schedule must be in place.	Alternative workweek schedules may be adopted. These schedules must be approved by two-thirds of employees through secret ballot vote.	Variances may be granted if it is determined that applicant has good cause for lack of compliance.	Employment Standards officials may grant employers variances from hours of work requirements Hours of work may be averaged over a longer period of time. Flexible work schedules are permitted given union approval or 65% employee approval	
Overtime	If employer and employee agree in writing, hours may be averaged for a period of up to four weeks to determine overtime eligibility. Hours may be averaged for a period of over four weeks if Director approves agreement.	Flexible overtime arrangements are permitted when agreed to by employees and employers.	Alternative workweek schedules may be adopted	Exceptions to 40 hours/week rule are permitted for specific occupations.	Flexible work schedules and overtime banking is permitted when agreed to by employees and employers.	
Variances	May be granted by Director for hours of work provisions	Technically, the Director may provide a variance on almost any provision in the Code, though not very many are	Not specified	An employer may apply to the Director for a variance from any rule or regulation establishing a	Variances may be granted for specific provisions by the Director on a time-limited, site-specific basis on the written	

	Ontario	Alberta	California	Washington	BC	Other
		actually granted.		standard for wages, hours, or conditions of labour. The director may issue a variance if it is determined that the applicant has shown good cause for the lack of compliance.	request of the employer and employees, if the majority of employees agree. The following provisions may be varied.	

COMPLAINTS – RECOVERY OF WAGES

	Ontario	Alberta	California	Washington	BC	Other
Time limit on recovery	Wages may only be recovered within 6 months of when wages became due.	No order may be made with respect to earnings after one year from the date on which the earnings should have been paid, if the employee is still employed by the employer, or after one year from the date the employment was terminated, if the employee is no longer employed by the employer.	Time limit depends on type of employment contract – oral contract – 2 yrs, written contract – 4 yrs, statutory complaint – 3 yrs.	Not legislated, 90 day limit in policy	Employee must file complaint within 6 months of termination. There are not time limits for employees who continue to be employed by that employer.	
Maximum amount	With some exceptions, an employment standards officer shall not issue an order for an employer to pay an employee more than $10,000.	Not specified	Not specified	Not specified	Amount of wages an employer may be required to pay an employee is limited to the amount that became payable in the period beginning 24 months before the date of the complaint or the termination of employment, whichever is earlier.	
Flexibility	Time limit may be extended to 12 months where employer has repeated contraventions.	Time limits may be extended by the Director for filing and issuing an order in extenuating circumstances.	No provisions.	No provisions.		

NEW ZEALAND

New Zealand legislation establishes minimum employment rights regarding:

- annual holidays,
- special leave if the employee, his or her spouse, dependent child or parent are sick,
- minimum wages,
- payment of wages,
- equal pay and equal rights for male and female employees,
- parental leave,
- other leave rights, such as leave required as a result of an accident at work or for voluntary training in the armed forces,
- union membership rights, and
- labour inspectors

Other matters related to an employment relationship between employers and employees may be set out in individual employment agreements. Specific matters to be included in these agreements are at the discretion of individual employers and employees. The following list includes matters that are commonly included in these individual agreements:

- term of agreement,
- payment calculations,
- additional payments, including payment for overtime and statutory holidays,
- pay day and method of payment
- pay reviews
- times of work, including number of hours worked each day or week and rest periods,
- training,
- future consultations regarding the employment agreement, and
- when a job ends.

AUSTRALIA

The federal *Workplace Relations Act 1996* establishes minimum employment rights, which apply to all employees in the country. The minimum rights set out by the 1996 legislation are:

- paid annual leave of four weeks,
- paid annual sick leave of one week,
- minimum wages,
- maternity, paternity and adoption leave and entitlements to part-time work pursuant to the birth or adoption of a child, and
- entitlement to a notice period for lawful termination of employment, or compensation instead of notice.

The *WRA* is designed to encourage employers and employees, or groups of employees, to negotiate individualized agreements on pay and working conditions. These agreements may be tailored to the own particular needs of an employment relationship. The *WRA* provides choice and flexibility in reaching agreements to enable employers and employees to take greater responsibility for their own industrial relations.

Each state, other than Victoria, which is covered exclusively by federal standards, has also established its own employment standards. Individual state standards complement or duplicate the federal standards as set out in the *WRA* and have only minor differences.

Individual employment agreements are intended to cover other areas of employment standards. Specific matters to be included in these agreements are at the discretion of individual employers and employees. Neither federal or state employment standards cover hours of work. Hours of work provisions are negotiated within the individual employment agreements. An official of the regulating bureaucracy, the 'Employment Advocate', must approve all individual employment agreements.

APPENDIX 4: List of professions self-governed/licensed by statute

PROFESSIONS SELF-GOVERNED OR LICENSED BY STATUTE INCLUDE[3]

- ACCOUNTANTS (CHARTERED) ACT
- AGROLOGISTS ACT
- ARCHITECTS ACT
- CHIROPRACTORS ACT
- DENTISTS ACT
- ENGINEERS AND GEOSCIENTISTS ACT
- FINANCIAL INSTITUTIONS ACT
- FORESTERS ACT
- HEALTH PROFESSIONS ACT
- LAND SURVEYORS ACT
- LEGAL PROFESSION ACT
- MEDICAL PRACTITIONERS ACT
- MORTGAGE BROKERS ACT
- NATUROPATHS ACT
- NOTARIES ACT
- NURSES (REGISTERED) ACT
- OPTOMETRIST ACT
- PHARMACISTS, PHARMACY OPERATIONS AND DRUG SCHEDULING ACT
- PODIATRISTS ACT
- REAL ESTATE ACT
- SECURITIES ACT
- VETERINARIANS ACT

[3] Partial list.